No. 88-1775

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

GARY E. PEEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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May 31, 1989

QUESTIONS PRESENTED

I. Is a statement contained on an attorney's letterhead which he circulates in the ordinary course of his practice of law "commercial speech"?

II. Does the First Amendment to the Constitution of the United States permit the Supreme Court of Illinois to impose public censure on an attorney for stating on his letterhead the fact that he has been certified as a civil trial specialist by the National Board of Trial Advocacy when such a statement has been found to be inherently misleading?

III. Does the Equal Protection Clause of the Fourteenth Amendment permit the application of a blanket prohibition to Petitioner when statements concerning specialization in patent, admiralty or trademark practice are exempted from the prohibition, and when attorneys may state that they "limit their practice to" or "concentrate their practice in" civil trial advocacy?

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STATEMENT OF THE CASE[1]

As stated in Petitioner's petition, the facts of this matter are simple and undisputed.[2] In 1968, Petitioner was licensed to practice law in the State of Illinois and he is still so licensed. Hearing Transcript (H.Tr.) at 23; P.A. at 28a. In 1981, Petitioner was certified by the National Board of Trial Advocacy (NBTA) as a civil trial specialist. H.Tr. at 26; P.A. at 30a.

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[1] Respondent wishes to adopt for citation the materials printed in Petitioner's Appendices attached to his petition. Respondent will cite these materials as "P.A. at __a." Respondent will attach appendices hereto which will be cited as "R.A. at __a."

[2] See, Petition for a Writ of Certiorari to the Supreme Court of Illinois (hereinafter, "Petition"), p. 3.

Beginning in 1983 and continuing to the present, Petitioner has placed the statement "Certified Civil Trial Specialist by the National Board of Trial Advocacy" on his professional letterhead which he uses in the ordinary course of his practice of law. H.Tr. at 21; P.A. at 26a.

On or about April 15, 1986 Petitioner received a letter from the Administrator of the Attorney Registration and Disciplinary Commission (hereinafter, "the Administrator") informing him that an investigation had been initiated concerning his use of the statement "Certified Civil Trial Specialist" on his letterhead. Petitioner was apprised of the Administrator's concern that his conduct was violative of Rule 2-105(a)(3) of the

Illinois Code of Professional Responsibility (Petition, pp. 2, 3). Petitioner was requested to respond, in writing, concerning his position on this matter.[3] Respondent responded to this letter on April 28, 1989. P.A. at 22a - 24a.

On April 9, 1987 the Administrator filed a complaint against Petitioner with the Hearing Board of the Attorney Registration and Disciplinary Commission alleging, in part, that Petitioner's letterhead violated Rule 2-105(a)(3). R.A. at 3a. On August 25, 1987 the Hearing Board issued its report. The Board found that Petitioner had violated Rule 2-105(a)(3) and held additionally,

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[3] H.Tr. at 19; R.A. at 1a. A reproduction of the Administrator's letter addressed to Petitioner dated April 15, 1986 is attached as an Appendix hereto, R.A. at 2a.

"[Petitioner's conduct] is 'misleading' as our Supreme Court has never recognized or approved any certification process." The Board recommended that Petitioner be publicly censured. P.A. at 20a.

Petitioner filed exceptions to the report of the Hearing Board, and on February 17, 1989 the Review Board of the Attorney Registration and Disciplinary Commission[4] filed a report concurring with the findings of fact and conclusions of law of the Hearing Board and recommending that Petitioner be publicly censured. P.A. at 16a.

Petitioner filed exceptions to the report and recommendation of the Review Board with the Supreme Court of

[4] The Review Board is the appellate board of the Attorney Registration and Disciplinary Commission. The parties may seek, as a matter of right, the review of any recommendation of the Hearing Board. See, 107 Ill.2d R 753(e).

Illinois.[5] On February 2, 1989 the Supreme Court of Illinois issued its opinion in this matter.[6] The Court rejected Petitioner's First Amendment (P.A. at 8a) and Equal Protection (P.A. at 14a) arguments and ordered that Petitioner be publicly censured for his violation of Rule 2-105(a)(3). P.A. at 15a. The Court found that Petitioner's conduct was misleading for two reasons, the first being:

> [T]he claim of certification by the NBTA impinges upon the sole authority of this court to license attorneys in this State and is misleading because of the similarity between the words "licensed" and

[5] An attorney may appeal a decision of the Review Board as a matter of right, if that decision concludes that disciplinary action is required. See, 107 Ill.2d R 753(e)(4) and (5).

[6] The Supreme Court of Illinois has the inherent authority to regulate the practice of law in Illinois and to discipline attorneys who have been admitted to the practice. See, In re Mitan (1979), 75 Ill.2d 118, 378 N.E. 2d 278, cert. denied, 444 U.S. 916 (1979).

"certified" . . . Indeed, it is apparent from the foregoing that the general public could be misled to believe that [Petitioner] may practice in the field of trial advocacy solely because he is certified by the NBTA. P.A. at 9a.

The second reason the Court found Petitioner's conduct to be misleading was:

> [T]he claim that [Petitioner] is certified by the NBTA is misleading because it tacitly attests to the qualifications of [Petitioner] as a civil trial advocate. P.A. at 9a.

Interestingly, though Petitioner claims the bona fides of the NBTA are without question,[7] the Court found that:

> [N]one of the briefs filed in support of [Petitioner] agree as to what standards an attorney must meet to receive certification from the NBTA. In the respondent's brief, it is stated that, "[t]o obtain certification by the National Board of Trial Advocacy, an attorney must have * * * acted as lead counsel in at least 40 jury trials carried to verdict, or 100 non-jury matters tried to conclusion, successfully

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[7] See, Petition, p. 19.

> score on a six-hour written examination, maintain continuing participation in continuing legal education, and obtained other standards and achievements." The Association of Trial Lawyers of America filed an amicus brief in which it is stated that the primary requirements for certification "are that the attorney have at least five years experience in civil practice, including experience as lead counsel in at least 15 major cases tried to verdict." The National Board of Trial Advocacy also filed an amicus brief, in which it is stated that, to be certified, an attorney must "have appeared as lead counsel in not less than 15 complete trials of civil matters to verdict or judgment, including not less than 45 days of full trial; at least five of these trials must be to a jury. In addition, applicants must have appeared as lead counsel in at least forty additional contested matters involving the taking of testimony. These may include trials, evidentiary hearings, depositions, or motions heard before or after trial." Does certification mean that the attorney has tried 40, 15, or 5 jury trials to verdict? Does the requirement concerning 40 contested matters refer to 40 jury cases tried to verdict, as the respondent asserts, or simply 40 hearings on motions, depositions and

nonjury trials, as the National Board of Trial Advocacy claims? If certification conveys such a varied and uncertain understanding as to its meaning to the attorneys who are in this case contending for the cause of certification, and who should be knowledgeable as to its meaning, how much more confusing is the statement that an attorney is certified as a trial specialist likely to be to the general public? P.A. at 10-11a.

SUMMARY OF ARGUMENT

Petitioner is engaging in "commercial speech" when he places the statement "Certified Civil Trial Specialist by the National Board of Trial Advocacy" on his professional letterhead which he circulates during the ordinary course of his practice of law. Petitioner can be publicly censured for including this statement on his letterhead because such a statement is inherently misleading and this Court has held that the States may prohibit misleading statements.

In addition, the decision of the Supreme Court of Illinois is not in conflict with the decisions of two other State Supreme Courts, because the record in this matter is different, and Petitioner's conduct was found to be

misleading at all three levels of review.

Finally, statements concerning specialization in patent, admiralty or trademark practice are permissibly exempted from prohibition because the State has a substantial interest in allowing attorneys engaged in these areas of practice to publicize these facts. The State may also permissibly allow an attorney to state that they "limit their practice to" or "concentrate their practice in" civil trial advocacy because the terms "limit" and "concentrate" are not inherently misleading, as opposed to the term "certified", and do not relate to the quality of services the attorney provides.

For these reasons, this Court should deny Petitioner's request for a Writ of Certiorari to the Supreme Court of Illinois.

REASONS FOR DENYING THE WRIT

I. A STATEMENT CONTAINED ON PETITIONER'S LETTERHEAD WHICH HE CIRCULATES IN THE ORDINARY COURSE OF HIS PRACTICE OF LAW IS "COMMERCIAL SPEECH".

Petitioner has waived review of the question of whether his statement is "commercial speech" because neither Petitioner or the various amici who filed briefs on his behalf have raised this issue below. This Court has held that review is limited to the specific Federal questions that were properly presented in the state court. Whitney v. California, 274 U.S. 357, 362-363 (1927).

As admitted by Petitioner,[8] whether Petitioner's statement is "commercial speech" is a Federal question. Petitioner has not previously raised this question. Therefore, this issue is waived. Regardless, there can be no question that Petitioner's statement is "commercial speech."

Petitioner's statement is a form of attorney advertising. Beginning with this Court's decision in Bates v. State Bar of Arizona,[9] attorney advertising has been held to be commercial speech.

This Court has held that commercial speech doctrine rests heavily on the "common sense" distinction between speech

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[8] See, Petition, p. 8.

[9] 433 U.S. 350 (1977).

proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. Ohralik v. Ohio State Bar Association, 436 U.S. 447, 455-456 (1978). Common sense dictates that Petitioner's statement proposes a commercial transaction or the continuation of an ongoing commercial relationship.

At hearing, Petitioner testified that he circulates his letterhead with the certification statement during the ordinary course of his practice of law. Petitioner's statement is sent to fellow attorneys, whose referrals constitute a substantial portion of Petitioner's legal business,[10] opposing litigants and

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[10] See, Petition, p. 17.

Petitioner's clients. Petitioner's holding himself out to these individuals as being a certified civil trial specialist, as well as indicating that he is officially licensed to practice law in Illinois, Missouri and Arizona, is for the purpose of informing these individuals that Petitioner believes he is a better qualified attorney because he has been certified by the NBTA.

This Court has held that, "[C]commercial speech serves to inform the public of the availability, nature and prices of products and services." Bates v. State Bar of Arizona, 433 U.S. 433, 364 (1977). Petitioner's statement informs the public of the nature of his services. Petitioner's statement is commercial speech as defined by this Court.

II. THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES DOES NOT PROHIBIT THE SUPREME COURT OF ILLINOIS FROM IMPOSING PUBLIC CENSURE ON PETITIONER FOR STATING ON HIS LETTERHEAD THE FACT THAT HE HAS BEEN CERTIFIED AS A CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY BECAUSE SUCH A STATEMENT HAS BEEN FOUND TO BE INHERENTLY MISLEADING.

A. THIS COURT SHOULD NOT DISTURB THE SUPREME COURT OF ILLINOIS' DECISION TO IMPOSE PUBLIC CENSURE ON PETITIONER BECAUSE HIS STATEMENT IS INHERENTLY MISLEADING AND THE STATE MAY PROHIBIT INHERENTLY MISLEADING STATEMENTS.

"Advertising that is false, deceptive, or misleading of course is subject to restraint." Bates v. State Bar of Arizona, 433 U.S. at 383. "Misleading advertising may be prohibited entirely." In re R.M.J., 455 U.S. 191, 203 (1982). Petitioner's statement was found to be misleading at all three levels of review on the state level. This finding is not against the manifest weight of the evidence contained in the record or a clear error of law. Therefore, the Supreme Court of Illinois can permissibly prohibit Petitioner from holding himself out through his letterhead as being a "Certified Civil Trial Specialist by the National Board of Trial Advocacy."

There is no question that Petitioner's conduct is violative of Rule 2-105(a)(3) of the Illinois Code of

Professional Responsibility. Petitioner's statement can constitutionally be prohibited because it is misleading.

Petitioner's statement is misleading, as found by the Supreme Court of Illinois, for two reasons. First:

> [T]he claim of certification by the NBTA impinges upon the sole authority of this court to license attorneys in this State and is misleading because of the similarity between the words "licensed" and "certified". Webster's dictionary defines "certificate" as "a document containing a certified and usually official statement * * * , especially: a document issued by * * * a state agency * * * certifying that one has satisfactorily * * * attained professional standing in a given field and may officially practice or hold a position in that field." (Emphasis added.) (Webster's Third New International Dictionary 366 (1986)). A "license" is defined by Webster's as "a right or permission granted * * * by a competent authority to engage in a business or occupation * * * or to engage in some transaction which but for such license would be unlawful." (Emphasis added.) (Webster's Third New International Dictionary 1304 (1986)). Indeed, it is apparent

> from the foregoing that the general public could be misled to believe that [Petitioner] may practice in the field of trial advocacy solely because he is certified by the NBTA. In [Petitioner's] letterhead, which we have set out above, directly below the statement concerning certification is the following: "Licensed: Illinois, Missouri, Arizona." The letterhead contains no indication that the licensure was by official organizations which had authority to license, whereas the certification was by an unofficial group and was purely a voluntary matter. In re Peel (1989), 126 Ill.2d 397, 405-406; P.A. at 9a.

Secondly, the Illinois Court found:

> [T]he claim that [Petitioner] is certified as a civil trial specialist by the NBTA is misleading because it tacitly attests to the qualifications of [Petitioner] as a civil trial advocate. Because not all attorneys licensed to practice law in Illinois are certified by the NBTA, the assertion is tantamount to a claim of superiority by those attorneys who are certified. 126 Ill.2d at 406; P.A. at 9a.

These findings are clearly consistent with the record in this matter and are not indicative of a clear error of law. Both reasons given by the Court would sustain a prohibition of Petitioner's statement.

As to the first reason, the Court's well-reasoned analysis needs little explanation. Petitioner's statement would be confusing to the public, as there is no explanation that the certification is not "official", therefore, in its present form, Petitioner's statement is inherently misleading. There is no need to show that any individual was actually misled, the State can simply prohibit Petitioner's conduct because of the inherently misleading content of his statement. See, e.g., Zauderer v. Office of Disciplinary Counsel, 471. U.S. 626 (1985).

As to the second reason, the Court found that Petitioner's statement is, in effect, a statement as to the quality of the legal services he provides. This Court has held that claims as to the

quality of legal services "are not susceptible of measurement or verification; accordingly, such claims may be so likely to mislead the public as to warrant restriction." Bates v. State Bar of Arizona, 433 U.S. at 383. Petitioner's statement relates to the quality of services he provides. Therefore, the State can prohibit Petitioner from including the statement on his letterhead.

B. THE DECISION BELOW CAN BE DISTINGUISHED FROM THE DECISIONS OF TWO OTHER STATE SUPREME COURTS, BOTH OF WHICH HELD THAT ON THE RECORD BEFORE THEM THE STATE COULD NOT PROHIBIT AN ATTORNEY FROM HOLDING HIMSELF OUT AS BEING A CERTIFIED CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY BECAUSE THE RECORD IN THIS MATTER IS DIFFERENT AND PETITIONER'S CONDUCT WAS FOUND TO BE MISLEADING AT ALL THREE LEVELS OF REVIEW.

This case is not a situation where this Court should grant a Writ of Certiorari pursuant to Rule 17(1)(c) of the Rules of Practice of the Supreme Court of the United States because the decision of the Supreme Court of Illinois

can be distinguished from the decisions of the Minnesota and Alabama Supreme Courts.

In Minnesota, the Court was presented with a record where the advisory boards of their disciplinary system found that an attorney holding himself out as a "Civil Trial Specialist by the National Board of Trial Advocacy", had not engaged in misleading or deceptive conduct. In re Johnson (Minn. 1983), 341 N.W.2d 282, 283. Based on this finding, the Minnesota Court found that "there is no basis for upholding the rule in this case." 341 N.W.2d at 285.

The Minnesota Court found that "Members of the general public could be misled by claims of specialization when no guidelines for specialization in the profession have been drawn," but the court felt that they were bound by their

lower boards' decisions. 341 N.W.2d at 285. In addition, the Minnesota Court found, "NBTA applies a vigorous and exacting set of standards and examinations on a national scale before certifying a lawyer as a trial specialist." 341 N.W.2d at 283.

In the case at bar, the Hearing and Review Boards of the Illinois disciplinary system and the Supreme Court of Illinois all found that such a statement was deceptive and inherently misleading. The Illinois Court also found that on the face of the record in Illinois, the standards to be certified by the NBTA were unclear. In re Peel (1989), 126 Ill.2d 397, 406-407. These findings are not against the manifest weight of the evidence or a clear error of law.

The Minnesota Court's decision was based on a dissimilar record. In addition, Petitioner's conduct was found to be misleading at all three levels of review. The decisions of the Illinois and Minnesota Courts can be distinguished on these bases.

The Supreme Court of Alabama found when presented with a situation where an attorney sought to hold himself out as being certified by the NBTA that:

> [I]t appears to us that a certification of specialty by the NBTA would indicate a level of expertise with regard to trial advocacy in excess of the level of expertise required for admission to the bar generally. We conclude, therefore, that Howell's proposed advertisement of certification by the NBTA as a civil trial advocate would not be misleading or deceptive on its face. Ex Parte Howell (1986), 487 So.2d 848, 851.

Again, the record in Illinois is different than that of Alabama. The Illinois Court could not discern what the qualifications to be certified by the

NBTA were. Therefore, no level of expertise could be determined. In fact, the Illinois Court specifically found that because the attorneys involved in the case could not figure out what the qualifications to be certified by the Board were, "how much more confusing is the statement . . . likely to be to the public?" 126 Ill.2d at 407.

The decision of the Alabama Court can be distinguished based on the fact that the record created in Illinois is different and the Illinois decision is based on the finding that Petitioner's conduct was found to be misleading at all three levels of review.

This Court should not grant Petitioner's request for a Writ of Certiorari based on the consideration set forth in Rule 17(1)(c), supra, because the conflicting decisions of the highest courts of two sister States can be distinguished.

III. THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES PERMITS A BLANKET PROHIBITION TO PETITIONER WHEN STATEMENTS CONCERNING SPECIALIZATION IN PATENT, ADMIRALTY OR TRADEMARK PRACTICE ARE EXEMPTED FROM THE PROHIBITION, AND WHEN ATTORNEYS MAY STATE THAT THEY "LIMIT THEIR PRACTICE TO" OR "CONCENTRATE THEIR PRACTICE IN" CIVIL TRIAL ADVOCACY.

A. STATEMENTS CONCERNING SPECIALIZATION IN PATENT, ADMIRALTY OR TRADEMARK PRACTICE ARE PERMISSIBLY EXEMPTED FROM PROHIBITION BECAUSE THE STATE HAS A SUBSTANTIAL INTEREST IN ALLOWING ATTORNEYS ENGAGED IN THESE AREAS OF PRACTICE TO PUBLICIZE THAT FACT.

The Supreme Court of Illinois is advancing a substantial State interest by allowing attorneys to publicize the fact that they specialize in patent, admiralty or trademark law. Petitioner's argument that his statement concerning NBTA certification is indistinguishable[11] from statements concerning specialization in patent, admiralty or trademark law is without merit.

This Court has held, "[T]he State lawfully may regulate only to the extent regulation furthers the State's substantial interest." In re R.M.J., 455 U.S. at 203. The substantial interest in allowing attorneys to hold themselves out as specialists in patent, admiralty and trademark law is that the general public

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11 See, Petition, p. 24.

has historically had difficulty in finding attorneys who practice in such fields. In re Peel, 126 Ill.2d at 411.

In discussing a situation where an attorney filed suit to be allowed to hold himself out as a patent attorney, though this argument could apply to the areas of admiralty and trademark law as well, the United States Court of Appeals for the Fifth Circuit stated:

> [T]here is a valid reason for permitting the patent attorney to indicate his specialty in an appropriate manner, such as in classified telephone directories. In most areas of this Country such attorneys are few and far between. No public interest is to be served, rather it would be hampered, by requiring a citizen to search from office to office, from city to city, like looking for a needle in the haystack, until, at last, he eventually might find a patent attorney. Silverman v. State Bar of Texas, 405 F.2d 410, 414 (5th Cir. 1968).

This statement, in a very straightforward and practical manner,

sets forth the State's interest in allowing attorneys to hold themselves out as specialists in the areas of patent, admiralty and trademark law.

Additionally, Petitioner's statement is distinguishable because he is holding himself out as being "certified" and a "specialist". The rules allowing patent, admiralty and trademark attorneys to hold themselves out as specialists in these fields do not allow them to use these inherently misleading terms.

Rules 2-105(a)(1) and (2) of the Illinois Code of Professional Responsibility (107 Ill.2d R 2-105(a)(1) and (2); Petition, pp. 2 - 3), provide:

> (a) A lawyer shall not hold himself out publicly as a specialist, except as follows:
>
> (1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney" or any combination of those terms, on his letterhead and office sign.

> (2) A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney" or "Trademark Lawyer," or a combination of those terms, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or "Admiralty Lawyer," or a combination of those terms, in any form of communication otherwise permitted under Rules 2-101 through 2-104. (See, 107 Ill.2d R 2-101 through 2-104, the rules outlining permissible advertising in Illinois.)

In compliance with the decisions of this Court, these rules are restrictive and narrowly drawn, while still advancing the State's substantial interest in allowing attorneys who practice in these fields to communicate these facts to prospective clients. See, e.g., In re R.M.J., 455 U.S. at 203. Therefore, the exceptions contained in the above rules are constitutionally acceptable.

B. THE STATE MAY PERMISSIBLY ALLOW AN ATTORNEY TO STATE THAT THEY "LIMIT THEIR PRACTICE TO" OR "CONCENTRATE THEIR PRACTICE IN" CIVIL TRIAL ADVOCACY, WHILE PROHIBITING STATEMENTS CONCERNING "CERTIFICATION" AND "SPECIALIZATION", BECAUSE THE TERMS "CONCENTRATE" AND "LIMIT" ARE NOT INHERENTLY MISLEADING AND DO NOT RELATE TO THE QUALITY OF THE SERVICES THE ATTORNEY PROVIDES.

The terms "limit" and "concentrate" are not inherently misleading as they do not convey a secondary meaning to the public, such as the terms "certified" and "specialist". See, In re Peel, 126 Ill.2d at 410. In addition, these terms do not relate to the quality of the services an attorney provides.

These terms simply indicate the areas in which an attorney will accept employment. The terms "limit" and "concentrate" allow attorneys to convey useful, meaningful and nonmisleading information to the public. In a draft of the American Bar Associatin Standing Committee on Ethics and Professional Responsibility Report to the House of Delegates (Draft Report), dated August 29, 1988, when discussing whether the comments to Rule 7.4 of the A.B.A. Model Rules should contain restrictions on attorneys stating that they "limit" or "concentrate" their practice in certain areas, the Draft Report states:

> In view of the desirability of promoting accurate communication by lawyers concerning their services and experience, absolute prohibition of the phrases 'limited to' and 'concentrated in' is unwarranted. These phrases can provide valuable information to a consumer. Unlike the terms 'specialist,' 'practices a specialty' and 'specializes in,' the

> phrases 'limited to' and 'concentrated in' lack the clear implication of formal recognition of a specialist.

For these reasons, the State may constitutionally allow an attorney to state that they "limit their practice to" or "concentrate their practice in" an area of law, while prohibiting statements concerning "certification" and "specialization."

CONCLUSION

This Court has held, "The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the Court'." Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1985). In furthermore of this great interest, the Supreme Court of Illinois has promulgated and enforced the rules in question.

The rules in question are constitionally sound. Petitioner's rights under the Constitution of the United States have not been violated. There is no Federal question which this Court needs to address. Therefore, this Court should deny Petitioner's Petition for a Writ of Certiorari to the Supreme Court of Illinois.

Respectfully submitted,

William F. Moran, III
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Disciplinary Commission
of Illinois
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Springfield, Illinois 62701
(217) 522-6838

Counsel for Respondent

May 31, 1989

APPENDICES

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APPENDIX A

EXCERPT OF HEARING TRANSCRIPT

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* * * *

MR. MORAN: I'll show you what's been marked as Administrator's Exhibit Number 2 for identification. Could you identify this, please.

MR. PEEL: Yes. That's a copy of the letter I received from the Attorney's Registration and Disciplinary Commission under date of April 15, 1986, indicating that there was an opinion by the Administrator that my letterhead may be in violation of Rule 2-105(a)(3) and requested a response to the letter within 14 days.

MR. MORAN: Did you receive what would have been the original of this letter?

MR. PEEL: Yes, I did, although I don't recall whether the attached exhibit in your exhibit came with the letter. It may have, but I don't recall.

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APPENDIX B

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

Gary E. Peel
Attorney at Law
40 Edwardsville Professional Park
Edwardsville, Illinois 62025

Springfield
April 15, 1986

Re: Gary E. Peel
at the charge of
the Administrator
No. 86-SI-3301

Dear Mr. Peel:

The Administrator of the Attorney Registration and Disciplinary Commission pursuant to Rule 51 of the Rules of the Attorney Registration and Disciplinary Commission has opened an investigation into your use of the words "Certified Civil Trial Specialist" on your letterhead. A copy of the letterhead in question is attached [See, P.A. at 21a].

The Administrator feels that your letterhead may be in violation of Rule 2-105(a)(3) of the Illinois Code of Professional Responsibility. Please write to the undersigned within fourteen days outlining your position concerning this matter.

Thank you for your cooperation.

Very truly yours,

William F. Moran, III
Counsel

WFM:tip
Enclosure

APPENDIX C

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

Administrator's No. 87 SH 76

IN THE MATTER OF: GARY E. PEEL,
Attorney-Respondent,

No. 2166259

COMPLAINT

[Filed April 9, 1987]

Carl H. Rolewick, Administrator of the Attorney Registration and Disciplinary Commission by his his attorney William F. Moran, III, complains of Respondent Gary E. Peel and alleges that Respondent, who was licensed to practice law in Illinois on November 14, 1968 and is still so licensed, has been guilty of conduct which tends to bring the courts and the legal profession into disrepute as follows:

1. On or before April 15, 1986 Respondent had stationary [sic] created for use in his practice of law. The letterhead on this stationary [sic] holds Respondent out as a "Certified Civil Trial Specialist by the National Board of Trial Advocacy." A copy of this stationary [sic] is attached as Exhibit 1 (See, P.A. at 21a).

2. Between April 15, 1986 and the date the Inquiry Board voted a complaint in this matter, Respondent used the above stationary [sic] in the ordinary course of his practice of law.

3. At no time has the Supreme Court of Illinois recognized any certification by the National Board of Trial Advocacy.

4. Respondent's conduct set forth above constitutes:

a. violating a disciplinary rule in violation of Rule 1-102(a)(1) of the Illinois Code of Professional Responsibility;

b. a false or misleading statement in violation of Rule 2-101(b); and

c. publicly holding himself out as a certified legal specialist in violation of Rule 2-105(a)(3).

WHEREFORE, the Administrator prays that this cause be assigned to a hearing panel of the Hearing Board, that a hearing be conducted, that the panel make findings of fact and conclusions of fact and law and a recommendation for such discipline and costs as is warranted.

Carl H. Rolewick, Administrator
Illinois Attorney Registration and
Disciplinary Commission

By: /s/ William F. Moran, III
Counsel for the Administrator

William F. Moran, III, Counsel
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